IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 284 of 2002

SOHAN LAL
V/S
RAMESHWAR LAL

Mr. JK BHAIYA for Mr. SAJJAN SINGH, for the appellant / petitioner

Mr. RK THANVI, for the respondent

Date of Order : 5.10.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

It is contended by the learned counsel for the appellant that when the learned lower Appellate court has decreed the suit for redemption, by setting aside the decree of the learned trial court, the learned lower Appellate Court was clearly in error in directing the plaintiff to be entitled to only symbolic possession, while on the appellants depositing the mortgage amount, the defendant was required to be directed to deliver actual physical possession of the property, consequent upon redemption. Elaborating the argument, it was contended, that the entire property was mortgaged by one Shankerlal in the year 1948 for a sum of Rs. 4000/-. Thereafter the appellant had purchased the property from Shankerlal by registered sale deed on 6.6.1969, and had thereafter

mortgaged the property with the defendant for a period of five years on 8.5.1972 by way of registered usufructory mortgage, on redemption of the mortgage dt. 8.5.1972 appellant was entitled to delivery of actual physical possession.

On the other hand, learned counsel for the respondent submitted, that the property was mortgaged with three brothers being Ramchander, appellant, and Gopal Lal, and the appellant got executed the sale deed from mortgagor, with the result, that the plaintiff stepped into the shoes of the mortgagor, but then, since before that, the property had been partitioned, and by the partition deed Ex.D-2, the property had fallen to the share of Ramchander, who had further mortgaged it for a sum of Rs. 4000/- to the respondent, and therefore, notwithstanding redemption of the mortgage dt. 8.5.1972, respondent is entitled to retain actual physical possession.

I have considered the submissions.

The whole thrust of the argument of the learned counsel for the appellant is, that by virtue of the appellant having purchased from the original mortgagor Shankerlal, the mortgage by Shankerlal came to an end, and therefore, the defendant could not claim to retain possession of the property under that mortgage. In my view

this submission completely ignores the basic fact, that by the mortgage deed of 1948, the property was mortgaged with three persons being the appellant, so also Ramchander, and Gopallal. In that view of the matter, even if the appellant had purchased the property from Shankerlal, at best he acquires equity of redemption, but then thereby the mortgagee rights of the other two persons did not come to an end. This is all the more significant, because even according to P.W.2 Ramchander, who has been examined by the plaintiff himself, there has been family partition between the brothers vide document Ex.D-2, he has proved the signatures thereon, and according to this document, the property had fallen to the share of the deponent Ramchander, and has also proved the endorsement A to B, and C to D on mortgage deed Ex.A-1, whereby Ramchander had received the mortgage money, and the cost of improvement, and had thus relinquished his rights in favour of present defendant respondent Rameshwarlal. Then Ex.D-2 is a document of 16/11/58, wherein at page-3 onwards, in para-3 the property in question had fallen in share of Ramchander, and it was stipulated, that on redemption, Ramchander alone would be entitled to receive the mortgage money. Since this document has been proved by P.W.2 himself, the appellant cannot get out of it.

In that view of the matter, on the face of Ex.D-2, and Ex.D-1 (endorsement A to B), the defendant is rightly

entitled to retain the actual physical possession of the property. Thus, I do not find any error in the findings recorded by the learned lower Appellate Court, and the relief granted by it.

The appeal thus does not involve any substantial question of law, and the same is dismissed.

(N P GUPTA),J.

/Sushil/